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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/218,085	12/22/1998	JAY S. WALKER	98-038	3571
22927 7590 10/20/2008 WALKER DIGITAL MANAGEMENT, LLC 2 HIGH RIDGE PARK STAMFORD, CT 06905				
EXAMINER HAVAN, THU THAO				
ART UNIT		PAPER NUMBER		
3695				
MAIL DATE		DELIVERY MODE		
10/20/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/218,085

Applicant(s)

WALKER ET AL.

Examiner

THU-THAO HAVAN

Art Unit

3695

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19, 23, 26, 28, 29, 49 and 53-94 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 64-81 is/are allowed.
- 6) ☒ Claim(s) 19, 23, 26, 28, 29, 49, 53-63 and 84-94 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/3508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Response to Amendment

Claims 19, 23, 26, 28-29, 49, and 53-94 are pending. This action is in response to the remarks received June 27, 2008.

Response to Arguments

Applicant's arguments with respect to claims 19, 23, 26, 28-29, 49, and 53-94 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

Claims **64-81** are allowed.

The following is an examiner's statement of reasons for allowance: The prior arts of record fail to teach, singly or in combination, selecting, by a processing device of the vending machine, one of the plurality of products to be offered as a mystery product, wherein the selection is based at least in part on data associated with the selected product; calculating, by the processing device, a mystery product price for the selected mystery product, wherein the mystery product price is greater than a pre-determined minimum acceptable price for the mystery product and less than the retail price associated with the mystery product.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims **19, 23, 26, 28-29, 49, 53-63, and 84-94** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi et al. (US 4,654,800) in view of Engstrom (US 5,780,133).

Re claims **19, 49, 53, 55-56, and 84-94**, Hayashi teaches an automatic sales machine for selling a product (col. 1, lines 13-19), the sales machine comprising:

a processor (fig. 1);

a memory connected to said processor storing a program to control the operation of said processor (figs. 10 and 1);

the processor operative with the program in the memory to:

maintain a database of product data (col. 3, lines 18-34; figs. 2-3), including normal price data and minimum acceptable price data for each of a plurality of products (col. 7, line 40 to col. 8, line 42; fig. 2; Discount prices correspond to the minimum acceptable price);

identify a monetary value available for purchasing a product (col. 12, lines 37-68);

select a product from among the plurality of products based on the monetary value and the minimum acceptable price data (col. 14, lines 11-68);

output via an output device an offer of the product to a consumer (figs. 1 and 13 (product dispenser));

determine whether the consumer accepts the offer (col. 9, lines 32-59); and
dispense the product if the consumer accepts the product, thereby revealing the identity of the product to the consumer (fig. 1 (product dispenser)).

However, Hayashi does not explicitly teach the product identity being concealed at the time of offer. On the other hand, Engstrom discloses the product identity being concealed at the time of offer when he discloses a sheet which is covered to hide coupons and two offers with each coupon (col. 1, lines 40-51; col. 2, line 64 to col. 3, line 21; abstract). Engstrom discloses an improved variable value retail coupon system where at least one coupon with at least two different offers is formed on the sheet and provisions are made to hide the coupon. He hides the offers so that the user does not know the value of the offer he is saving or destroying before he opens the system. Thus, it would have been obvious to one of ordinary skill in the art to conceal the product at the time of offer when hiding an offer such as a coupon from the customer so that the customer does not know the value of the offer as discloses in Engstrom.

Re claims **23, 54**, and **59-60**, Hayashi teaches processor is further operative with the program in the memory to select a combination of products (col. 12, lines 37-68).

Re claims **26** and **57-58**, Hayashi teaches processor is further operative with the program in the memory to determine whether the monetary value is at least as great as the

lowest minimum acceptable price, and to offer the product performed only upon determining that the monetary value is at least as great as the lowest minimum acceptable price (col. 7, line 40 to col. 8, line 42).

Re claims **28** and **61**, Hayashi teaches databases further includes expiration data for each of the plurality of products and wherein the processor is further operative with the program in the memory to select the product based on the expiration data (col. 19, lines 18-35).

Re claims **29** and **62-63**, Hayashi teaches profitability data for each of the plurality of products and wherein the processor is further operative with the program in the memory to select the product based on the profitability data (col. 16, lines 30-52).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Thao Havan whose telephone number is (571) 272-8111. The examiner can normally be reached on Monday to Friday from 6am-2pm..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct-uspto.gov>. Should you have questions on access to the Private

PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

/Thu Thao Havan/

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10/9/08